

**DEPARTMENT OF THE NAVY  
Office of the Secretary  
Washington, DC 20350-1000**

**SECNAVINST 5870.6  
OCNR:OCCIP  
8 September 1988**

**SECNAV INSTRUCTION 5870.6**

**From: Secretary of the Navy  
To: All Ships and Stations**

**Subj: COPYRIGHT IN WORKS OF  
AUTHORSHIP PREPARED BY  
DEPARTMENT OF THE NAVY  
PERSONNEL**

**Ref: (a) Sections 101 and 105 of Title 17,  
U.S.C.  
(b) SECNAVINST 5720.44A  
(c) SECNAVINST 5370.2H**

**1. Purpose.** To provide guidance on the conditions under which copyright protection subsists in works of authorship prepared by Department of the Navy (DON) employees. The term "employee" includes all full-time and part-time civilian officers and employees and military personnel (both Regular and Reserve) of the DON.

**2. Cancellation.** ONRINST 5870.6

**3. Copyright.** Under United States law, copyright protection subsists in any original work of authorship fixed in tangible form. Copyright protection is not available, however, for a "work of the United States Government"--i.e., a work prepared by an officer or employee of the United States Government as part of that person's official duties per reference (a). Examples of works of authorship commonly prepared by employees of the DON include literary works (works expressed in words or numbers including computer programs and documentation), music, pictorial and graphic works, audiovisual works (including motion pictures) and sound recordings.

**4. Official Duty Determinations.** Prior to asserting a copyright in a work, a DON employee should make a determination of whether the work was prepared as part of his or her official duties. Employees should be aware of applicable provisions of references (b) and (c) with regard to writing, official duties and use of information obtained from official duties.

**5. Criteria for Official Duty Determinations.**

In making a determination of whether a work was prepared as a part of official duties, the employee may be guided by these criteria:

a. Works prepared under the following circumstances are works prepared as part of official duties:

(1) Preparation of the work was within the employee's position, job or billet description. This includes a work properly self-assigned by the employee who was in a position to do so.

(2) Preparation of the work was properly assigned by the employee's superiors.

b. The fact (or absence of the fact) that there was a Government contribution in the preparation of the work is not, in and of itself, determinative of whether the work was prepared as part of official duties. (Examples of "Government contributions" are use of Government time, facilities, equipment, materials, funds, or the services of other Government employees on official duty.)

c. An employee is not prevented from asserting a copyright in a work prepared at that person's own volition and clearly outside his or her official duties, even though the work includes knowledge or information derived from the employee's official duties or relates to the professional field of the employee. Employees should consult the applicable portions of references (b) and (c) as to the required review for any work prepared by them.

**6. Assistance.** Employees shall consult with their supervisors for assistance in making determinations as to whether works were prepared as part of their official duties when the works include knowledge or information derived from their official duties or relate to their professional field. They may also consult Navy Intellectual Property Counsel or other attorneys in Offices of Counsel or Judge Advocates for advice in interpreting this instruction.

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**7. Transfer of Copyright.** No DON employee (nor any supervisor of such employee) should execute any document which expressly or implicitly asserts a copyright in a work, or which purports to transfer copyright, if the work was prepared as part of the employee's official duties. If such a document is requested, the requester of such transfer should be informed that the work is a work of the United States Government and therefore not protected by copyright, citing 17 U.S.C. § 105. In the event that the work was prepared with another person whose contribution to the work was not made as part of official duties as a United States Government employee, the requester may be informed of the name and location of such other person.

**8. Notice of Copyright.** A notice of copyright should not be placed on a work prepared as part of the official duties of a DON employee. Under United States copyright law, it is a criminal offense to place a false notice of copyright on an article with intent to defraud (17 U.S.C. § 506(c)). In the event that an employee prepares a work which is a combination of a work prepared as part of his or her or any other Government employee's official duties and a work which was not so prepared, but is preponderantly the former, any notice of copyright should include a statement identifying those portions of the work which were prepared as part of his or her official duties and thus not protected under U.S. copyright law (17 U.S.C. § 403).

**9. Navy Infringement of Copyrighted Works of Employees.** An employee has no right of action against the Navy for copyright infringement if he or she was in a position to order, influence or induce the use of the copyrighted work by the Navy. An employee does not have a right of action against the Navy with respect to any copyrighted work prepared by the employee if Government time, material or facilities were used in the preparation of the work (28 U.S.C. § 1498).

H. LAWRENCE GARRETT, III  
Acting Secretary of the Navy

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